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REC'D TN
REGULATORY AUTH.

SEP 8 PM 2 03

Patrick Turner
Attorney

SEPTEMBER 8, 2000
OFFICE OF THE
EXECUTIVE SECRETARY

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SEP 08 2000

VIA HAND DELIVERY

Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

TN REGULATORY AUTHORITY
GENERAL COUNSEL'S OFFICE

Re: CSA TN99-7617-04

00-20677

Dear Mr. Waddell:

Enclosed is a copy of a letter sent to Richard Collier today regarding the above-referenced CSA.

Very truly yours,

Patrick W. Turner

PWT/jem

Enclosure

BellSouth Telecommunications, Inc. 615 214-6311
2101 Fax 615 214-7406
333 Commerce Street
Nashville, Tennessee 37201-3300

Patrick Turner
Attorney

September 8, 2000

VIA TELECOPIER

Richard Collier, Esquire
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37245

Re: CSA TN99-7617-04

Dear Richard,

I appreciate your meeting with me yesterday to discuss the use of the term "primary jurisdiction" in the arbitration provision of this CSA. As we discussed, the term "primary jurisdiction" is a long-standing term of art under Tennessee law. As early as 1955, for example, the Supreme Court of Tennessee stated that it has

consistently adhered to the rule that matters within the jurisdiction of the [public service commission] must first be determined by it, in every instance, before the courts will adjudge any phase of the controversy; and it is plain that orderly procedure requires an adherence to this practice, otherwise different phases of the same case might be pending before the commission and the courts at one time, which would cause endless confusion.

Breeden v. Southern Bell, 285 S.W.2d 346 (Tenn. 1955). As a more recent decision of the Tennessee Court of Appeals explained it, "[t]he doctrine of primary jurisdiction 'generally requires that parties resort first to an administrative agency before they seek judicial action involving a question within the competency of that agency.'" *Alltel Tennessee, Inc. v. Tennessee Public Service Commission*, 1990 WL 20132 (March 7, 1990) (unpublished decision). Both the United States Court of Appeals for the Sixth Circuit and the United States District Court for the Eastern District of Tennessee have adopted the same rule. See *Alltel Tennessee, Inc. v. Tennessee Public Service Commission*, 913 F.2d 305 (6th Cir. 1990); *CSI*

Richard Collier, Esquire
September 8, 2000
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Communications Systems v. South Central Bell, 346 F. Supp. 487 (E.D. Tenn. 1971).

It is against this backdrop that the term "primary jurisdiction" is used in the arbitration provision of this CSA. As noted in BellSouth's responses to the Data Requests regarding this CSA, the TRA has jurisdiction to review and approve CSAs, and the arbitration provision of the contract expressly states that "This [arbitration] provision shall not apply to issues that are within the primary jurisdiction of the state regulatory authority." See Page 14. The arbitration provision, therefore, does nothing whatsoever to alter the TRA's authority to review and approve the termination provision of the CSA. See *Wachtel v. Shoney's Inc.*, 830 S.W.2d 905, 908 (Tenn. Ct. App. 1992) ("When the parties enter into a binding arbitration agreement, they are essentially entering into a contract and the contours of the arbitrators' authority in a given case are set by the arbitration agreement.").

Thanks again for meeting with me to discuss this CSA, and please let me know if you need any more information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patrick".

Patrick W. Turner

PWT/jem